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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/766,866  | 01/30/2004  | Jean-Louis Gueret    | 118322              | 3899             |
| 25944   | 7590        | 11/18/2005           | EXAMINER            |                  |
| OLIFF & BERRIDGE, PLC<br>P.O. BOX 19928<br>ALEXANDRIA, VA 22320 |             |                      | WALCZAK, DAVID J    |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3751                |                  |

DATE MAILED: 11/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/766,866

Applicant(s)

GUERET, JEAN-LOUIS

Examiner

David J. Walczak

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3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 October 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 2,3,8,9,17,29 and 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-7,10-16,18-28 and 31-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/30/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of Group I, Species I and Subspecies A in the reply filed on 10/11/05 is acknowledged. The traversal is on the ground that there is no serious burden on the Examiner to examine all of the claims. This is not found persuasive because the examination of 36 claims directed to two distinct groups, two species and two subspecies is clearly more burdensome than the examination of a lesser amount of claims directed to a single group, species and subspecies. The Applicant has indicated that claims 1-7, 10-28 and 31-36 are readable on the elected species/subspecies, however, claims 2, 3 and 17 are directed to structure which is present in non-elected Species II. Accordingly, claims 1, 4-7, 10-16, 18-28 and 31-36 will be examined herein and claims 2, 3, 8, 9, 17, 29 and 30 are withdrawn from further consideration.

The requirement is still deemed proper and is therefore made FINAL.

### ***Abstract***

The abstract of the disclosure is objected to because phrases which can be implied, such as "A device includes" should not be present therein. Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 112***

Claim 14 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim contains subject matter that was not

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described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The specification has not disclosed a flask having a neck wherein the neck includes both a cylindrical surface (claim 13) and a frustoconical surface at the base thereof.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-7, 10-16, 18-28 and 31-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buckley et al. (hereinafter Buckley) in view of Drozd, Jr. (hereinafter Drozd). In regard to claim 1, Buckley discloses a device comprised of a flask 10 having a threaded neck 14 and an applicator having a stem 21', 22' (see Figure 7), an applicator element 12' disposed at the first end of the stem and a closure cap 11 supporting the second end of the stem wherein the cap includes a threaded portion for engagement with the neck 14. Although the Buckley reference does not disclose a ring releasably connected to the threaded portion and arranged to remain secured to the neck during removal of the applicator, attention is directed to the Drozd reference, which discloses another flask and cap arrangement wherein a ring 16a (see Figures 8-10) is releasably connected to the threaded portion of the cap 12 and will remain secured to the neck of the flask when the cap is removed in order to enable a user to determine whether or not the cap has been previously removed. Accordingly, it would have been

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obvious to one of ordinary skill in the art at the time the invention was made to provide the structure of the flask neck and ring taught by Drozd onto the Buckley device in order to enable a user to determine whether or not the device has previously been open. In regard to claim 4, the ring has a first portion 52 in relief that enables the ring to be snap-fastened onto a second portion 54 in relief on the neck (see column 7, lines 12-18). In regard to claim 5, the second portion in relief includes an annular bead 54 and the first portion in relief comprises teeth 52. In regard to claim 6, the ring and cap disclosed by Drozd are formed by molding plastic (as evidenced by the cross-hatching used in the drawings and column 4, lines 36-39). In regard to claim 7, the ring is connected to the threaded portion by a breakable bridge 14a. In regard to claims 10-12 and 16, the neck includes a first anti-rotation device 44a in the form of a ramp and the ring includes a second anti-rotation device 28a in the form of a ramp wherein the anti-rotation devices operate as claimed (see column 7, lines 18-24 and column 6, lines 3-29). In regard to claim 13, the neck in the Buckley device includes a base having a cylindrical surface (located below the threads). In regard to claim 15, the flask in the Buckley device has a shoulder at the base of the neck. In regard to claims 18 and 19, the flask in the Buckley device can be made from glass or plastic (see column 1, lines 48-52). In regard to claims 20-22, 24, 25, 27 and 28, although the Buckley reference does not disclose the capacity of the flask or the dimensions of the neck, stem and applicator brush 12', at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to design the flask to have the claimed capacity and the neck, stem and applicator to have the claimed dimensions, depending on the needs

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of the user. In regard to claim 23, the stem is visible when the applicator is withdrawn and viewed as claimed (see Figure 7). In regard to claim 26, the flask contains a substance to be applied to nails (see column 2, lines 3-7). In regard to claims 31-36 the method as claimed is inherent in the operation of the device discussed supra.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Walczak  
Primary Examiner  
Art Unit 3751

DJW  
11/17/05